

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 02-243
Table of Allotments,) RM-10533
FM Broadcast Stations.) RM-10712*
(Marathon and Mertzon, Texas))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 14, 2003

Released: November 17, 2003

By the Assistant Chief, Audio Division:

1 In response to a Petition for Rule Making filed by Linda Crawford ("Crawford"), the Audio Division considers herein a *Notice of Proposed Rule Making*¹ proposing the allotment of Channel 278C2 to Mertzon, Texas, as that community's second local aural transmission service. Crawford has filed comments expressing her continued interest in applying for Channel 278C2 if it is allotted to Mertzon, Texas, and stating that if her application is granted, she will construct a station in that community. Big Bend Broadcasting ("Big Bend") has filed Counterproposal and Comments ("Counterproposal")² in which it proposes to allot Channel 278C to Marathon, Texas, as that community's first local aural transmission service. Big Bend states that it will apply for Channel 278C if it is allotted to Marathon and if its application is granted, it will construct a station for Marathon. For the reasons stated below, we allot Channel 278C to Marathon, Texas and Channel 278C2 to Mertzon, Texas.

2. Big Bend's proposal to allot Channel 278C at Marathon is mutually exclusive with Crawford's proposal to allot Channel 278C2 to Mertzon. Nevertheless, our engineering staff discovered that both allotments can be made if certain restrictions are imposed upon both allotments. Therefore, since interest has been expressed in channels for both Mertzon and Marathon, we will allot these channels and avoid any comparison of the proposals. The transmitter site for Marathon has been changed in order to accommodate the allotment of the channels requested for both Mertzon and Marathon. As explained in the *Notice*, Mertzon already has a vacant commercial FM channel, Channel 266A, allotted to it and thus its community status is established. Marathon is a Census Designated Place with a 2000 U.S. Census population of 455 persons. Big Bend explains that it has its own elementary and high schools, a public

¹ *Mertzon, Texas*, 17 FCC Rcd 16208 (MB 2002)

² Big Bend also filed a Supplement to its Counterproposal. The Supplement merely includes Internet excerpts verifying the facts about Big Bend that have already been stated in the Counterproposal. We have considered the Supplement in order to assure a complete record. By Public Notice, Report No. 2609, released June 10, 2003, rulemaking number RM-10712* was assigned to Big Bend's Counterproposal.

library, two churches, a bank, five restaurants, a law office, a health center and several other businesses. Several of those entities have "Marathon" in their names. We find that Marathon is a community to which an FM broadcast allotment can be made pursuant to Section 307(b) of the Communications Act of 1934, as amended

3. We conclude that the public interest would be served by the allotment of Channel 278C2 at Mertzon, Texas, since it will provide a second local aural transmission service to that community. Channel 278C2 can be allotted to Mertzon, Texas, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules at coordinates of 31-10-09 NL and 100-51-41 WL, with a site restriction of 10.8 kilometers (6.7 miles) southwest of Mertzon, Texas. The Mexican Government has concurred in this allotment. We have also determined that the public interest would be served by the allotment of Channel 278C to Marathon, Texas, because it will provide a first local aural transmission service to that community. Channel 278C can be allotted to Marathon, Texas, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's rules at coordinates of 30-21-56 NL and 103-17-40 WL, with a site restriction of 18.4 kilometers (11.5 miles) north of Marathon, Texas. Although the Commission has sought concurrence for the Channel 278C allotment at Marathon from the Mexican Government, notification of Mexican concurrence has not been received. If a construction permit for Channel 278C at Marathon, Texas, is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes."

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 8, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows

<u>Community</u>	<u>Channel Number</u>
Mertzon, Texas	266A, 278C2
Marathon, Texas	278C

5. Filing windows for Channel 278C2 at Mertzon, Texas, and Channel 278C at Marathon, Texas, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

6. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-10533) filed by Linda Crawford in MM Docket No. 02-243 IS GRANTED.

7. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by Big Bend Broadcasting IS GRANTED.

8. IT IS FURTHER ORDERED, that MM Docket No. 02-243 IS TERMINATED

9 For further information concerning this proceeding, contact R Barthen Gorman, Media Bureau,
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FEDERAL COMMUNICATIONS COMMISSION

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